

**MINUTES OF THE MEETING  
OF THE  
LOUISVILLE METRO DEVELOPMENT REVIEW COMMITTEE MEETING  
November 6, 2019**

A meeting of the Louisville Metro Development Review Committee was held on November 6, 2019 at 1:00 p.m. at the Old Jail Building, located at 514 W. Liberty Street, Louisville, KY 40202.

**Commissioners present:**

David Tomes, Chair  
Rich Carlson, Vice Chair  
Jeff Brown

**Commissioners absent:**

Jim Mims

**Staff members present:**

Joe Reverman, Assistant Director, Planning & Design Services  
Brian Davis, Planning & Design Manager  
Steve Hendrix, Planning & Design Coordinator  
Molly Clark, Planner I  
Lacey Gabbard, Planner I  
Dante St. Germain, Planner II  
John Carroll, Legal Counsel  
Beth Stuber, Transportation  
Chris Cestaro, Management Assistant

The following matters were considered

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**APPROVAL OF MINUTES**

**October 30, 2019 DRC Meeting Minutes**

00:02:01 On a motion by Commissioner Carlson, seconded by Commissioner Brown, the following resolution was adopted:

**RESOLVED**, that the Louisville Metro Development Review Committee does hereby **APPROVE** the minutes of its meeting conducted on October 30, 2019.

**The vote was as follows:**

**YES: Commissioners Carlson, Brown, and Tomes.**

**ABSENT: Commissioner Mims.**

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**NEW BUSINESS**

**CASE NUMBER 19-MPLAT-0045**

Request: A waiver for new single family access to a collector-level roadway  
Project Name: Minor Plat for Carolyn Miller  
Location: 1410 & 1608 Penile Road  
Owner/Applicant: Robert and Connie Little  
John and Carolyn Miller  
Representative: Kathy and Richard Matheny – Cardinal Surveying  
Jurisdiction: Louisville Metro  
Council District: 13 – Mark Fox

**Case Manager: Dante St. Germain, AICP, Planner II**

Notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

**Agency Testimony:**

00:02:54 Dante St. Germain presented the case (see staff report and recording for detailed presentation.) She noted that an opposition e-mail had been received from neighbor Theresa Cardwell, and explained Ms. Cardwell's objection to the Committee members.

00:05:10 In response to a question from Commissioner Brown, Beth Stuber, with Metro Transportation Planning, said the proposed location had been reviewed for sight distance.

**The following spoke in favor of this request:**

Richard Matheny, Cardinal Surveying, 9009 Preston Highway, Louisville, KY 40219

Robert Little, 1410 Penile Road, Louisville, KY 40272

Carolyn Miller, 2003 Penile Road, Louisville, KY 40272

**Summary of testimony of those in favor:**

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00:05:35 Richard Matheny, the applicant's representative, presented the applicant's case (see recording for detailed presentation.)

00:07:08 Robert Little and Carolyn Miller were both called, but said they were present only if needed to answer questions.

**The following spoke in opposition to this request:**

Theresa Cardwell, 1600 Spirit Drive, Louisville, KY 40272

**Summary of testimony of those in opposition:**

00:07:58 Theresa Cardwell said the only thing she (and one of the other neighbors) is opposed to is that one of the lots accesses Spirit Drive, a private road, without permission from other property owners.

00:08:50 Commissioner Tomes asked John Carroll, legal counsel for the Planning Commission, about some procedures regarding the driveway that is not connected with the application (see recording for detailed discussion.)

**Rebuttal:**

00:09:45 Mr. Matheny confirmed that the driveway objected to was put onto the plat only to note its location as an existing feature. He noted that there are three or four easements on this plat that are old (have been there for years, and overlap.) He said he thought Ms. Cardwell's objection is a civil matter and does not apply to this plat.

00:10:27 Commissioners' discussion.

**An audio/visual recording of the Development Review Committee meeting related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.**

00:11:04 On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution, based on the staff report, the applicant's justification, and evidence and testimony heard today, was adopted:

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**WHEREAS**, the Louisville Metro Development Review Committee finds that the waiver will not adversely affect adjacent property owners because similarly situated landowners along Penile Road have the same type of access and the site distance is good; and

**WHEREAS**, the Committee further finds that the waiver will not violate the Comprehensive Plan because the primary intent of the regulation is to limit direct access onto collector or higher-level roads when planning multiple new residential uses. Only one home is proposed on this site and allowed because the area is not served by sewers; and

**WHEREAS**, the Committee further finds that the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because the existing driveways on Tract 1 and Tract 3 are not located in a position to allow for a shared driveway use; and

**WHEREAS**, the Committee further finds that the strict application of the provisions of the regulation creates an unnecessary hardship on the applicant because the granting of one additional access point will not overly burden this road and is desirable for a single-family home on 4.918 acres; now, therefore be it

**RESOLVED**, the Louisville Metro Development Review Committee does hereby APPROVE the requested Waiver of Land Development Code (LDC) section 7.8.60.B.4 to allow individual single-family driveway access to a collector level roadway.

**The vote was as follows:**

**YES: Commissioners Carlson, Brown, and Tomes.**

**ABSENT: Commissioner Mims.**

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**NEW BUSINESS**

**CASE NUMBER 19-DDP-0049**

Request: Revised Detailed District Development Plan  
Project Name: Dutchmans Parkway Retail  
Location: 6460 Dutchmans Parkway  
Owner/Applicant: Jack and Joseph Dulworth  
Representative: Ashley Bartley – Qk4  
Jurisdiction: City of St. Matthews  
Council District: 26 – Brent Ackerson

**Case Manager: Dante St. Germain, AICP, Planner II**

Notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

**Agency Testimony:**

00:11:51 Dante St. Germain presented the case and showed a brief Power Point presentation (see staff report and recording for detailed presentation.)

00:15:47 In response to a question from Commissioner Brown, Ms. St. Germain said there is no requirement in the St. Matthews version of the Land Development Code that requires an ADA-compliant pedestrian connection between the public sidewalk and the building entrance. She said all Louisville Metro could do was suggest to the applicant that a pedestrian connection be provided; the applicant chose not to.

**The following spoke in favor of this request:**

Ashley Bartley, Qk4, 1046 East Chestnut Street, Louisville, KY 40204

**Summary of testimony of those in favor:**

00:16:23 Ashley Bartley, the applicant's representative, presented the applicant's case (see recording for detailed presentation.) She showed aerial photos of the site and the surrounding areas; the site plan, and a rendering.

**The following spoke in opposition to this request:**

No one spoke.

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00:18:45 Commissioners' deliberation.

**An audio/visual recording of the Development Review Committee meeting related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.**

00:18:57 On a motion by Commissioner Carlson, seconded by Commissioner Brown, the following resolution, based on staff's and applicant's testimony heard today, was adopted:

**RESOLVED**, that the Louisville Metro Development Review Committee does hereby **RECOMMEND** to the City of St. Matthews that the requested Revised Detailed District Development Plan with removal of existing Detailed Plan Binding Elements and adoption of new Detailed Plan Binding Elements be **APPROVED, subject to the following binding elements:**

**Existing General Plan Binding Elements (to be retained)**

1. Prior to issuance of building permits on each site or phase of the development a detailed district development plan shall be submitted to the Planning Commission and the City of St. Matthews for approval. Each plan shall be in adequate detail to ensure compliance with binding elements of the general district development plan. Each plan may be subject to additional binding elements which may relate to, but not be limited to the following items:
  - a. Screening, buffering, landscaping as described in Article 12.
  - b. Density, floor area, size and height.
  - c. Points of access.
  - d. Land uses.
  - e. Signs.
  
2. The development shall not exceed the following:
  - a. Residential development 238 dwelling units on 31.4 acres (7.6 units per acre).
  - b. Office development - 301,000 square feet.
  - c. Commercial development 406,500 square feet.

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3. The following roadway improvements shall be made:
  - a. Improvements to provide left turn lanes at the intersection of Dupont Lane and Breckenridge Lane (a/k/a Breckinridge Lane) shall be made prior to occupancy of buildings A through G. Design and Standards of construction shall be approved by the Kentucky Department of Highways.
  - b. The construction of "New Dutchmans Parkway" shall be completed prior to occupancy of any structure south of Beargrass Creek. Design and standards of construction shall be approved by the Jefferson County Department of Public Works and Transportation.
  - c. A right turn lane will be constructed at the east leg of the intersection of Dutchmans Lane and Cannons Lane prior to occupancy of buildings south of Beargrass Creek.
  - d. An access easement will be provided and constructed between "New Dutchmans Parkway" and Dutchmans Lane. Construction will be completed prior to occupancy of Building "N" or other buildings requiring access at this point on "New Dutchmans Parkway". The location will be as shown on the general district development plan and preliminary subdivision plan, unless otherwise approved by the Director of the Jefferson County Department of Public Works and Transportation.
  - e. Westbound "New Dutchmans Parkway" will be restricted temporarily to one lane beyond the main shopping center entrance by construction of a physical barrier. The design and location of the barrier shall be approved by the Jefferson County Department of Public Works and Transportation. The balance of the pavement west of the temporary barrier shall be defined as a single lane by paint striping or other means approved by the Jefferson County Department of Public Works and Transportation.
  - f. A 150 foot left turn storage lane for the mid point entrance on Breckenridge Lane will be added prior to making the median cut for the entrance.
4. Access to Breckenridge Lane shall be limited to points shown on the approved district development plan.
5. A. The mid-point entrance located on Breckenridge Lane shall not be signalized either at the time of construction or in the future.



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- B. If the Chief of District Highway Engineer (KDOH DS) determines that additional traffic control is necessary at the midpoint entrance, a peak hour prohibition of left turns of a barrier median as approved by the Department of Highways shall be installed by the developer. The need for the control shall be based upon a traffic analysis.
  - C. The mid point exit shall be limited to a right turn out only.
6. Access to lots fronting on "New Dutchmans Parkway" shall be as shown on the approved district development plan, unless otherwise approved by the Director of the Jefferson County Department of Public Works and Transportation.
  7. The only permitted freestanding signs shall be located as shown on the approved district development plan. The sizes and heights of the signs shall not exceed those shown on the approved plan with exception of the shopping center sign on Dutchmans Lane, which shall not exceed 20 feet in height. The signs shall be shown on each detailed district development plan.
  8. The following additional sign regulations shall apply.
    - i. Business identification signs along the pedway shall be of uniform size- and shape.
    - ii. All permanent free-standing signs identifying the project, shopping center and buildings shall be monument style and landscaped.
    - iii. "Monument style signs" shall mean a sign where the bottom of the sign forms the base of the sign.
    - iv. No attached building identification sign on an office building shall list individual businesses within that building.
  9. Automobile sales and gasoline sales uses shall not be permitted.
  10. Building facades shall be made of brick, stone, decorative cementitious products or glass. The building may trimmed in other materials that are compatible with the design. Except for the rear service area of Building G, concrete block siding shall not be permitted. Wood may be sued on the exterior construction of bay windows, balconies, gables, and trim, provided, however, if for restaurant use, Buildings C through F and H through K may be constructed with wood facades provided it is stained or painted brown or grey, and such colors maintained thereafter.
  11. Binding element No. 10 (above) shall not apply to single family dwellings.

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12. Before a building permit is issued:
  - a. The development plan must be reapproved by the Jefferson County Department of Public Works and Transportation.
  - b. The size and location of any proposed sign must be approved by the Planning Commission and the City of St. Matthews. The Planning Commission may require that the signs must be smaller than would otherwise be permitted by the Zoning District Regulations.
  - c. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
  - d. A major subdivision plat shall be recorded creating the lots and roadways shown on the approved general district development plan and preliminary subdivision plan. Prior to recording the record plat, a maintenance association shall be established to ensure that roadway "B" is maintained in appropriate condition. A Deed of Restriction outlining maintenance responsibilities shall be executed and recorded simultaneously with the recording of the record plat.
  - e. The appropriate variances must be obtained from the Board of Zoning Adjustment to allow the wall encroachment as shown on the approved district development plan.
13. The portion of Dutchmans Lane located from the western terminus of New Dutchmans Parkway at the western property line of The Springs, extending westwardly to Cannons Lane, shall be constructed to a width of three traffic lanes. NTS has agreed to be responsible for 25% of the proposed improvements, for which the City of Louisville is acting as applicant for Federal Aid Urban Systems funding.
14. Where the creek is disturbed, trees will be planted along its banks; a series of very low pools will be created along the channel course. The creek bottom shall be natural rock rather than concrete. Plans shall meet drainage requirements of Water Management.
15. If a building permit is not issued within one year of the date of approval of the plan or rezoning, whichever is later, the property shall not be used in any manner unless a revised district development plan is approved or an extension is granted by the Planning Commission.
16. A certificate of occupancy must be received from the appropriate code office prior

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to occupancy of the structure or land for the proposed use. All binding elements must be implemented prior to requesting issuance of the certificate.

17. The above binding elements may be amended as provided for in the Zoning District regulations, upon approval of the City Council.

**New Binding Elements:**

All binding elements from the approved General Development Plan are applicable to this site, in addition to the following:

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Development Code and agreed upon binding elements unless amended pursuant to the Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee, and the City of St. Matthews, for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
3. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
4. Before any permit (including but not limited to building, parking lot, change of use is requested:
  - a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
  - b. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Article 12 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
  - c. Access and crossover easement agreements in a form acceptable to the

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Planning Commission legal counsel shall be recorded prior to requesting a certificate of occupancy. A copy of the recorded instrument shall be submitted to the Division of Planning and Development Services.

5. There shall be no outdoor storage on the site.
6. If a building permit is not issued within one year of the date of approval of the plan, the property shall not be used in any manner unless a revised district development plan is approved or an extension is granted by the Planning Commission.
7. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
8. There shall be no outdoor music (live, piped, radio or amplified), outdoor entertainment, or outdoor PA system permitted on the site.
9. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.

**The vote was as follows:**

**YES: Commissioners Carlson, Brown, and Tomes.**

**ABSENT: Commissioner Mims.**

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**NEW BUSINESS**

**CASE NUMBER 19-DDP-0053**

Request: District Development Plan  
Project Name: Container Rick House  
Location: 11601 Diode Court  
Owner/Applicant: Bolivar Specialties, LLC  
Representative: John Campbell – Heritage Engineering LLC  
Jurisdiction: Louisville Metro  
Council District: 11 – Kevin Kramer

**Case Manager: Lacey Gabbard, AICP, Planner I**

Notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

**Agency Testimony:**

00:20:21 Lacey Gabbard presented the case (see staff report and recording for detailed presentation.) She noted that there is an error in the staff report: there is **NO** sidewalk waiver being requested.

**The following spoke in favor of this request:**

John Campbell, Heritage Engineering, 642 South 4<sup>th</sup> Street, Louisville, KY 40202

Patrick Nall, DKN Architects, 716 East Market Street, Louisville, KY 40202

**Summary of testimony of those in favor:**

00:21:25 John Campbell, the applicant's representative, presented the applicant's case and showed a brief Power Point presentation (see recording for detailed presentation.)

00:24:17 In response to a question from John Carroll, legal counsel for the Planning Commission, an unidentified applicant's representative said the facility can store 35,640 barrels.

00:24:36 In response to a question from Commissioner Tomes, the unidentified applicant's representative and Mr. Campbell gave details about the framing of the building, and how the containers are modified to make a cohesive building (see recording.)

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00:25:43 Commissioner Carlson asked if there was any type of containment around the building in case of spills/fire/other emergency. Mr. Campbell said the use of shipping containers should offer “superior strength”; also, there is a containment area which is identified on the development plan. The containment area is designed to capture leaks/spills. Commissioner Carlson said he wanted to know what safety features were in place for “a catastrophic fire event” to make sure no flammable alcohol runs off-site and affect other sites. Mr. Campbell said the details of the containment area (exact depth, size, etc.) will be provided at the time of construction. He said he has roughly calculated the proposed area to ensure it can contain the contents of the warehouse.

00:27:17 Commissioner Brown said the property is currently at 93% tree coverage, and asked why can't the applicant commit to preserving any of it. Mr. Campbell discussed the property's grade change – since the proposal is still in the preliminary stages, the applicant has not yet done a detailed grading plan and cannot commit to any tree canopy plan (see recording for detailed explanation.) He said the trees along the property line will be preserved, and hopefully trees can be added onsite.

**The following spoke in opposition to this request:**

No one spoke.

00:28:57 Commissioners' deliberation.

**An audio/visual recording of the Development Review Committee meeting related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.**

00:30:28 On a motion by Commissioner Carlson, seconded by Commissioner Brown, the following resolution, based on the Standard of Review and evidence and testimony heard today, was adopted:

**WHEREAS**, the Louisville Metro Development Review Committee finds that there do not appear to be any environmental constraints or historic resources on the subject site. Tree canopy requirements of the Land Development Code will be provided on the subject site; and

**WHEREAS**, the Committee further finds that provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community

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has been provided. Public Works' preliminary approval is pending the sidewalk waiver requests. MSD has provided preliminary approval; and

**WHEREAS**, the Committee further finds that the proposed Outdoor Amenity Area meets Land Development Code requirements; and

**WHEREAS**, the Committee further finds that the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community; and

**WHEREAS**, the Committee further finds that the overall site design and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering and screening will be provided to screen adjacent properties and roadways. Buildings and parking lots will meet all required setbacks; and

**WHEREAS**, the Committee further finds that the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code; now, therefore be it

**RESOLVED**, the Louisville Metro Development Review Committee does hereby **APPROVE** the requested District Development Plan, **SUBJECT** to the following binding elements:

**General Plan Binding Elements**

1. Detailed district development plans shall be submitted for each site or phase of development. Each plan shall be subject to additional binding elements. The additional binding elements may relate, but not be limited, to the following items:
  - a. Screening, buffering, landscaping.
  - b. Points of access.
  - c. Floor area, size and height of buildings.
  - d. Land uses.
  - e. Signs.
2. Before a building permit is issued:
  - a. The detailed development plan must be reapproved by the Jefferson County of Department of Public Works and Transportation and Metropolitan Sewer District.

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- b. A major subdivision plat shall be recorded to develop the lots as shown.
- 3. The subdivision identification sign shall be located as shown on the approved district development plan. The sign shall be 15 feet in height and shall not exceed 125 square feet in area.
- 4. There will be no direct access to the site for construction equipment or any future use by means of the at grade crossing located across the Southern railroad tracks.
- 5. If a building permit is not issued within one year of the date of approval of the plan or rezoning, whichever is later, the property shall not be used in any manner unless a revised district development plan is approved or an extension is granted by the Planning Commission.
- 6. A certificate of occupancy must be received from the appropriate code enforcement office prior to occupancy of the structure or land for the proposed use. All binding elements must be implemented prior to requesting issuance of the certificate.
- 7. The above binding elements may be amended as provided for in the Zoning District Regulations.

**Proposed Site Plan Binding Elements**

All binding elements from the approved General Development Plan are applicable to this site, in addition to the following:

- 1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's for review and approval; any changes/additions/alterations not so referred shall not be valid.
- 2. Prior to development (includes clearing and grading) of each site or phase of this project, the applicant, developer, or property owner shall obtain approval of a detailed district development plan in accordance with Chapter 11, Part 6. Each plan shall be in adequate detail and subject to additional binding elements.
- 3. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.



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4. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
  
5. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit is requested:
  - a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
  - b. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
  - c. Final elevations/renderings shall be submitted for review and approval by Planning Commission staff. A copy of the approved rendering shall be available in the case file on record in the offices of the Louisville Metro Planning Commission.
  
6. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
  
7. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
  
8. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.

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**The vote was as follows:**

**YES: Commissioners Carlson, Brown, and Tomes.**

**ABSENT: Commissioner Mims.**

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**NEW BUSINESS**

**CASE NUMBER 19-CELL-0003**

**NOTE: This case was heard together with Case No. 19-DDP-0057 (below). Each was voted on separately. Testimony for BOTH cases appears under Case No. 19-CELL-0003.**

Request: Application for a cell tower consisting of a 125-foot tall monopole with a 5-foot lightning arrester (total of 130 feet) within a 2,500 square foot compound area; AND a Revised Detailed District Development Plan

Project Name: New Cut

Location: 7328 Southside Drive

Owner: DP Rentals, LLC

Applicant: Vertical Bridge Development, LLC / T-Mobile

Representative: Todd R. Briggs – Briggs Law Office, PSC

Jurisdiction: Louisville Metro

Council District: 25 – David Yates

**Case Manager: Steve Hendrix, Planning & Design Coordinator**

Notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

**Agency Testimony for Cell Tower portion of the case:**

00:31:18 Steve Hendrix presented the cell tower portion of the case and showed a Power Point presentation (see staff report and recording for detailed presentation.) He noted that a proposed condition of approval (requiring MSD to add drainage flow) has been changed because the applicant has submitted a site plan showing that.

00:36:50 Mr. Hendrix said that binding element #5 (on page 5 of the staff report) for the Revised Detailed District Development Plan may need to be changed since the applicant said they would need to use a generator. Proposed Binding Element #5 reads as follows:

No power equipment that will cause a noise disturbance will be run between the hours of 10:00 p.m. and 6:00 a.m.

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**The following spoke in favor of this request:**

Mike Hill, Land Design & Development, 503 Washburn Avenue, Louisville, KY 40222

Todd Briggs, 10200 Forest Green Boulevard Suite 112, Louisville, KY 40223

**Summary of testimony of those in favor:**

00:37:50 Todd Briggs, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

00:39:29 Commissioner Brown asked if binding element #5 needed to be revised. Mr. Briggs said the only thing the applicant can confirm right now is that there will be a stand-by emergency generator on site in case of a power outage. Commissioner Carlson suggested adding, "...except for emergency generators operating during power outages." to the end of existing binding element #5.

**The following spoke in opposition to this request:**

No one spoke.

**The following spoke neither for nor against:**

00:40:16 A nearby property owner [name unintelligible] asked about potential health hazards from cell towers. Mr. Briggs said these facilities are operated under FCC regulations – they set the requirements and guidelines, which the applicant will abide by.

00:41:11 Commissioners' deliberation.

00:42:13 Mr. Hill presented the **Detailed District Development Plan portion** of the case and showed a Power Point presentation (see recording for detailed presentation.)

00:44:11 A nearby property owner asked when construction would begin. Mr. Hill said it would begin in 2020, but he did not have an exact date.

00:44:47 Commissioners' deliberation.

**DEVELOPMENT REVIEW COMMITTEE MINUTES**  
**November 6, 2019**

**NEW BUSINESS**

**CASE NUMBER 19-CELL-0003**

**An audio/visual recording of the Planning Commission hearing related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.**

**Cell Tower**

00:45:04 On a motion by Commissioner Carlson, seconded by Commissioner Brown, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

**WHEREAS**, the Louisville Metro Development Review Committee finds that the proposed cell tower meets the following criteria:

Criteria for cellular towers:

- 1) The Planning Commission shall review the application in light of its agreement with the Comprehensive Plan and the Land Development Code;
- 2) The Planning Commission shall make its final decision to approve or disapprove the application;
- 3) The Planning Commission shall advise the applicant in writing of its final decision within 60 days of submittal of the application.

**State law precludes the Planning Commission from denying a cellular tower application based upon concerns about electromagnetic field issues so long as the provider adheres to the standards adopted by the FCC.**

In addition, the Federal Telecommunications Act of 1996 prohibits a citing decision for a cellular tower based upon the existence of other cellular service in the area.

The proposal meets the standards of the Land Development Code, "Uniform Application".

**Relationship to Plan 2040 Community Facilities**

**Goal 3** Design community facilities to be resilient and compatible with the surrounding neighborhood.

**19. Antenna Towers for Cellular Telecommunications Services or Personal Communications Services should:**

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**NEW BUSINESS**

**CASE NUMBER 19-CELL-0003**

**19.1** Minimize the likely effects of the installation on nearby land uses and values. The monopole will be visible, no matter where the structure is located, but the proposed placement takes advantage of some existing trees that are to remain, the backside of apartments and the backs of the retail stores facing New Cut Road. In addition, the compound area will be screened by an 8-foot tall wooden privacy fence and buffered with 34 six-foot tall evergreens.

**19.2** Be sited (in order from most preferred to least preferred):

1. highway rights-of-way except designated parkways
2. existing utility towers
3. commercial centers
4. government buildings
5. high-rise office structures
6. high-rise residential structures

The proposed tower easement area is located in a C-2 zoned property in a Town Center Form District.

**19.3** Minimize the likely effects of the installation on nearby land uses and values. Monopole will be visible no matter where the structure is located, but the proposed placement takes advantage of some existing trees that are to remain, the backside of apartments and the backs of the retail stores facing New Cut Road.

Now, therefore be it

**RESOLVED**, that the Louisville Metro Development Review Committee does hereby **APPROVE** the requested 125 foot monopole tower with a five foot lightning arrestor for a total structural height of 130 feet within an approximate 2,500 square foot compound area.

**The vote was as follows:**

**YES: Commissioners Carlson, Brown, and Tomes.**

**ABSENT: Commissioner Mims.**

**DEVELOPMENT REVIEW COMMITTEE MINUTES**  
**October 30, 2019**

**NEW BUSINESS**

**CASE NUMBER 19-DDP-0022**

**NOTE: This case was heard together with Case No. 19-CELL-0003 (above). Each were voted on separately. For testimony on Case No. 19-DDP-0057, see Case No. 19-CELL-0003.**

Request: Application for a cell tower consisting of a 125-foot tall monopole with a 5-foot lightning arrester (total of 130 feet) within a 2,500 square foot compound area; AND a Revised Detailed District Development Plan

Project Name: New Cut

Location: 7328 Southside Drive

Owner: DP Rentals, LLC

Applicant: Vertical Bridge Development, LLC / T-Mobile

Representative: Todd R. Briggs – Briggs Law Office, PSC

Jurisdiction: Louisville Metro

Council District: 25 – David Yates

**Case Manager: Steve Hendrix, Planning & Design Coordinator**

Notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

**For testimony on Case No. 19-DDP-0057, see Case No. 19-CELL-0003.**

**An audio/visual recording of the Planning Commission hearing related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.**

00:45:43 On a motion by Commissioner Carlson, seconded by Commissioner Brown, the following resolution, based on the applicant's and staff's testimony heard today, was adopted:

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**NEW BUSINESS**

**CASE NUMBER 19-DDP-0022**

**RESOLVED**, that the Louisville Metro Development Review Committee does hereby **APPROVE** the requested Revised Detailed District Development Plan, including a modification to Binding Element #5, **SUBJECT** to the following binding elements:

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. Before any permit (including but not limited to building, parking lot, change of use, site disturbance) is requested:
  - a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Public Works and the Metropolitan Sewer District.
  - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
  - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a certificate of occupancy or building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
  - d. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
  - e. A crossover easement and shared parking agreement in a form acceptable to the Planning Commission legal counsel shall be created between the adjoining property owners and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services.
  - f. A minor subdivision plat or legal instrument shall be recorded creating the lot lines as shown on the development plan & dedicating additional right-



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of-way as required by the Department of Public Works and shown on the approved development plan.

- g. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the June 6, 2019 Planning Commission meeting. A copy of the approved rendering is available in the case file on record in the offices of the Louisville Metro Planning Commission.
- 3. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
- 4. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
- 5. No power equipment that will cause a noise disturbance will be run between the hours of 10:00 p.m. and 6:00 a.m. *except for emergency generators operating during power outages.*

**The vote was as follows:**

**YES: Commissioners Carlson, Brown, and Tomes.**

**ABSENT: Commissioner Mims.**

**DEVELOPMENT REVIEW COMMITTEE MINUTES**  
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**ADJOURNMENT**

The meeting adjourned at approximately 1:47 p.m.

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Chairman

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Division Director